IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 132 of 2001.

Date of Decision: 24-12-2007.

State of Himachal Pradesh. ……..Appellant.

Versus

Nek Ram. . ……..Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? . No.

For the appellant : Mr. V.K. Verma, Additional Advocate General.

For the respondent : Mr. N.K. Thakur, Advocate.

Surinder Singh, J.

The respondent was acquitted for the offence punishable under Section 61 (1) (a) (c) of the Punjab Excise Act as applicable to State of Himachal Pradesh, for allegedly having found in possession of a working still. The acquittal of the respondent has been challenged in this appeal by the State.

I have heard the learned counsel for the parties and have carefully gone through the record.

In brief, the prosecution case has been that on 4-12-1994 at about 3.30 p.m. the then S.H.O. Basher Singh was on patrol duty at Gugaghat along with other Police officials. He received the secret information that the respondent was dealing in illicit liquor. Thus he organized a raiding party where in he had associated Rameshwar and Bishan Singh as independent witnesses. The house and the cattle shed of the respondent were raided. During the search operation, the respondent was allegedly found running a working still. Lahan was in an aluminium utensil which was kept on the hearth. It was boiling and the connection

[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

was given through a pipe to the vessel, locally called "Tokkani". The said Tokkani was containing 20 ltrs of illicit liquor. After cooling down, it was dismantled and the entire working still was taken into possession vide memo Exhibit PW1/A. The sample of Lahan and illicit liquor were taken in two separate nips. The case property was sealed with seal impression 'S'. Ruka Exhibit PW6/A was sent for registration of the case on the basis of which FIR Exhibit PW2/A was formally registered.

The Police had prepared the site plan Exhibit PW6/B. The samples were sent for chemical tests. After receiving the report Exhibit PA, it was confirmed that one sample was of Lahan and the another of illicit liquor. Thus, the case was presented in the Court for trial.

Finding a prima facie case against the respondent, he was charged for the aforesaid offence to which he pleaded not guilty and claimed trial.

The prosecution led its evidence in proof of the charge and after hearing the parties at the end of the trial, the respondent was acquitted on the ground that the alleged independent witnesses did not support the case of prosecution and the sole testimony of the Investigating Officer was unsafe to sustain the conviction of the respondent and there was no material evidence to show that the respondent in any way connected with the offence charged.

As a matter of fact, the prosecution also suffers from many other defects which went un-noticed from the trial court. In the instant case Basher Singh who was the S.H.O. at the relevant time and had conducted the raid of the house and cow shed of the respondent, is the prime witness whereas the other alleged independent witnesses have not supported the case of the prosecution. Though Basher Singh had stated that he found the respondent in possession of a working still on the spot and after dismantling it, it was taken into possession. The respondent was arrested. The case property is the Drum Exhibit P1, Tokani Exhibit P2, Patila Exhibit P3, Canny Exhibit P4 . He did not state about the existence of canny Exhibit P4 on the spot. On having a look of the site plan

Exhibit PW6/B, the Tokani is placed on the top of Patila and it is shown to have contained water. The rubber pipe is fixed to the Tokani and has been shown in the direction of a vessal at point "E" which has not been elaborated what it was. The site plan itself depicts the sorry state of affairs because from the Tokkani which contained water, the illicit liquor cannot be distilled through a pipe more specifically when the vapours coming from the Lahan are not cooled down in a utensil so as to form the illicit liquor. The rubber pipe which otherwise was essential as a part of the working still to collect the liquor in the Jarican or any other utensil was not taken into possession to corroborate his version. Further, he did not say about taking in to possession the char-wood which was used for the said purpose to lend strength to his testimony. So much so, he has not stated anything regarding deposit of these articles along with sample of Lahan and illicit liquor with M.H.C. in the Malkhana.

Gian Chand (PW5) who was working as M.H.C. in Police Station Sadar at the relevant time has stated that only two nips one of illicit liquor and another of lahan were deposited in the Malkhana by Basher Singh on 4.12.1994 but he did not say about the deposit of any of the apparatus of the working still, alleged to have been recovered by the Investigating Officer. Even during the trial, the case property was not shown to him.

Further the samples were alleged to have been taken by Gurchain Ram Constable for chemical test in CTL Kandaghat vide R.C. No. 11 of 1995 but its copy was not placed on the record. Further, in order to complete the chain, it was incumbent upon the prosecution not only to examine Gurchain Singh who had taken the samples to the C.T.L. Kandaghat for its analysis but also to show that neither he nor any body else had tampered with the samples so long it remained with him till its deposit in the Laboratory. But unfortunately neither there is such evidence nor Gurchain Singh was examined by the prosecution. Thus, there is a missing link in the case right from the day when the alleged recovery was made

by Basher Singh Inspector, S.H.O. till the samples reached C.T.L. Kandaghat for analysis.

In view of this discrepant evidence, the prosecution story does not inspire confidence to sustain the conviction of the respondent. Accordingly, there is no cause for interference into the judgment of acquittal passed by the trial Court. Accordingly, the appeal is dismissed.

The respondent is discharged of his bail bonds entered upon by him at any stage of the trial.

(Surinder Singh),
Judge.

December 24, 2007.
(bm)